IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 279 of 2006

Date of Decision: 11.4.2007.

Sachin Sharma … Petitioner.

Versus.

Union of India & ors. …. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Ramakant Sharma, Advocate.

For the Respondents: Mr. Janesh Mahajan, Central Government Counsel.

Deepak Gupta, J.

By means of this writ petition, the petitioner has prayed that the orders of the respondents refusing to grant compassionate appointment to him be set aside and the respondents be directed to grant compassionate appointment to him.

The facts shortly stated are that the petitioner's father was employed as Senior Auditor with the respondents. He died on 1.4.1999. Thereafter, the mother of the petitioner filed an application that the petitioner be appointed on compassionate grounds. On 10.6.1999, a communication was sent to the mother of the petitioner that the competent authority has acceded to her request and that the petitioner, namely, Shri

Sachin Sharma would be appointed on compassionate ground on his attaining the age of 18 years. It is apparent that the petitioner was minor at that time.

Thereafter the petitioner completed his studies in June, 2002 and his mother again made a request that her son be appointed. This matter remained under consideration and on 31.3.2004, the respondents sent a communication to the petitioner's mother that the Board of Officers has considered the case of the petitioner and found that the request of the petitioner for appointment on compassionate ground could not be accepted. Thereafter, there was further communication between the parties and his mother made various representations to the authorities and finally filed the present writ petition in March, 2006.

The respondents in their reply have submitted that they have considered the case of the petitioner as per the policy as it stood on the day when the case of the petitioner was considered and it was found that his case is not covered under the terms of the policy. Along with the reply, the petitioner has attached the scheme for compassionate appointment.

Clause (1) of the scheme gives the object of the scheme and it is mentioned that the object is to provide employment on compassionate grounds to a dependent family member of a Government Servant dying in harness and "leaving his family in penury and without any means of livelihood."

Clause (5) deals with the eligibility and one of the eligibility criteria is that the family is indigent and deserves immediate assistance for relief from financial destitution.

Clause (7) which deals with determination / availability of vacancies, provides that the appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.

The respondents have also placed on record the revised procedure for selection under the compassionate appointment scheme. This is a procedure prescribed by the Department of Posts and Telegraph and adopted by the Ministry of Defence. Under the procedure so laid down marks are to be allotted under the different heads. It is provided that in case, the family pension excluding DA and allowance is upto Rs.1300/- then the marks to be allotted are 20. As the pension rises, the marks fall and the families who are receiving the family pension over Rs. 2500/- would get only 6 marks.

Similarly, it is provided that if the terminal benefits of an employee are less than 1 lac, the marks allotted under the said head would be 10. As the terminal benefits rise, the marks to be allotted get reduced and if the family has received more than Rs.3 lacs as terminal benefits, no marks are awarded under this head. The procedure prescribed for similar marking under the head of monthly income of earning member(s) or income from property. Similarly, if the deceased has left behind moveable/immovable property then as per the market value, the marks are to be allotted. The other heads under which marks are to be given are: (a) number of dependents, (b) number of unmarried daughters and (c) number of minor children. The last head under which the marks are to be allotted is “left over service”. In case left over service is less than five years, then only 5 marks are to be allotted and if left over service is more than 20 years then 8 marks are to be allotted.

The respondents have considered the case of the petitioner as per this revised procedure and have not found him suitable for grant of compassionate appointment.

The pension payable to the family of the petitioner is Rs.3,400/- per month and terminal benefits of Rs. 5,87,654/- were paid to the family of the deceased. Taking all these criteria into consideration, the Board of

Officers has come to the conclusion that the case of the petitioner does not fall within the criteria of penurious condition. The respondents have acted strictly in accordance with the policy and procedure prescribed thereunder.

In **Umesh Kumar Nagpal v. State of Haryana**, JT 1994 (3) SC 525, the apex Court held as follows:-

> " As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or re-tax the qualifications laid down by t he rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased.".

The apex Court in **State Bank of India & Anr. V. Somvir Singh**, JT 2007 (3) SC 398,held as follows:-

> "11. The scheme for appointment of dependents of deceased employee on compassionate grounds framed by the appellant- Bank *inter alia* provides that in making assessment of the financial condition of the family which is an important criterion for

determining the eligibility to compassionate appointment, the following factors are required to be taken into consideration:

(a) Family pension

(b) Gratuity amount received

(c) Employee's/Employer's contribution to Provident Fund

(d) Any compensation paid by the Bank or its Welfare Fund

(e) Proceeds of LIC Policy and other investments of the deceased employee

(f) Income for family from other sources

(g) Income of other family members from employment or otherwise

(h) Size of the family and liabilities, if any.

12. The Competent Authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependents of employee who died in harness are not in penury and without any means of livelihood. The Authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant-Bank in fact mandates the Authority to take those factors into consideration. The Authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land."

In the present case also, the respondents have considered all the relevant criteria and have found that the petitioner is not covered under the scheme for grant of compassionate appointment. The compassionate appointment cannot be made de hors the scheme. The income of the family from all sources is required to be taken into consideration according to the scheme and if this income is taken into

consideration, it cannot be said that the petitioner's case falls under the criteria of "penury"..

We find no merit in this writ petition which is dismissed with no order as to costs.

(Deepak Gupta), J.

April 11, 2007. (Surinder Singh), J.

s.